BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HELMUT F. AND GISELA H. FROEBER)

Appearances:

For Appellants: Helmut F. Froeber, in pro. per,

For Respondent: Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code on the protest of Helmut F. and Gisela H. Froeber against a proposed assessment of additional personal income tax in the amount of $1,323.26 for the year 1975. Subsequent to the filing of this appeal, respondent conceded that its proposed assessment should be reduced by $337.00 to allow appellants credit for tax withheld from their salaries during 1975. Accordingly, the amount remaining at issue in this appeal is $986.26.

On April 10, 1976, appellants filed their joint California personal income tax return for 1975. In that return they reported total income of $35,809.65 and two adjusted gross-income: figures, $30,292.65 and $8,655.04. They arrived at the latter figure as follows:

$$\frac{30,292.65 \text{ F.R.N.}}{3.5 \text{ F.R.N.}} \times \$1.00 = \$8,655.04$$

Appellants computed their tax liability on the basis of an adjusted gross income of $8,655.04, claiming that that figure represented the fair market value of Federal Reserve notes in 1975, since in that year they could be exchanged for silver coin with a face value of only two-sevenths (2/7) of the face value of Federal Reserve notes. Respondent issued its proposed assessment of additional personal income tax on the basis of an adjusted gross income of $30,292.65, rather than the lower figure used by appellants. Whether respondent's assessment was proper is the only issue presented by this appeal.

Appellants contend they have the constitutional right to compute their tax liability in any form of legal tender they wish, and the legal right to decrease their taxes by any means which the law permits. They urge that Federal Reserve notes are not "dollars" and, therefore, the reduction of their adjusted gross income was proper, since it was in accordance with the true value, of Federal Reserve notes in 1975. Furthermore, appellants contend, the remuneration which they received for their services in 1975 was not in the form of cash but in the form of checks or notes, and in their tax return for that year they properly computed their tax on the basis of the fair market value of those debt instruments. Finally, appellants argue that their income is not a proper subject of taxation because a tax measured by income is an excise tax imposed on corporations exercising certain state-granted privileges, none of which have been granted to or exercised by appellants.

It is well settled that respondent's determination of a deficiency assessment is presumed correct and the burden of proving that determination erroneous is on the taxpayer. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414] (1949); Appeal of Pearl R. Blattenberger, Cal. St. Bd. of Equal., March 27, 1952.) On numerous occasions in the past, we have rejected attacks such as appellants' on the validity or constitutionality of Federal Reserve notes. (See, e.g., Appeal of Armen B. Condo, Cal. St. Bd. of Equal., July 26, 1977; Appeal of Donald H. Lichtle, Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of Iris E. Clark, Cal. St. Bd. of Equal., March 8, 1976.) Although some of the arguments

presented by appellants herein do constitute a departure from the standard litany we often hear in cases of this type, we nevertheless believe they-are equally without merit.

It does not appear to be disputed that appellants had an adjusted gross income of $30,292.65 in 1975. As residents of California, they clearly were subject to the personal income tax imposed by this state (Rev. & Tax. Code, § 17041), and there was no legal justification for their application of any conversion factor in order to reduce the adjusted gross income figure. In computing taxable income under the Personal Income Tax Law, Federal Reserve notes must be accounted for at their face value, regardless of periodic fluctuations in their purchasing power. (Appeal of Robert S. Means, Cal. St. Bd. of Equal., Jan. 9, 1979; see generally Lou M. Hatfield, 68 T.C. 895 (1977), and cases cited therein.) This is the only rational basis on which the tax laws can be administered.

Upon review of the entire record, we conclude that appellants have failed to establish any error in respondent's determination of their personal income tax liability for 1975. Respondent's action in this matter must therefore be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Helmut F. and Gisela H. Froeber

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Helmut F. and Gisela H. Froeber against a proposed assessment of additional personal income tax in the amount of $1,323.26 for the year 1975, be and the same is hereby modified in accordance with respondent's concession that the amount of the proposed assessment should be reduced to $986.26. In all other respects, respondent's action is sustained.

Done at Sacramento, California, this 25 day of September, 1979, by the State Board of Equalization.

, Chairman

, Member

, Member

, Member

, Member